**Court No.3**

Criminal Misc. Application No. 146 of 2002 (Old No. 2420/1998)

Madan Lal Bhashin and others ……Applicants.

Versus

State of ……Respondent

**Hon'ble Irshad Hussain, J.**

Heard Sri Ramji Srivastava learned counsel for the applicants and Sri Harish Pandey brief holder for the State.

This is a petition under Section 482 of the Code of Criminal Procedure (for short 'Code') against the impugned order dated 15.5.1996 (Annexure-4), whereby exercising the powers under Section 319 of the Code learned Magistrate passed the order to proceed against five other persons in the criminal case for offences punishable under Sections 494, 495 and 496 IPC.

From the record it is evident that respondent no. 2 Smt. Usham Bhashin filed a written complaint on 1.6.1995 and procedure as envisaged under chapter-XV was resorted to by the learned Magistrate and on appreciation of the statements under Section 200 and 202 of the Code the cognizance was taken, against one accused named as Joginder Singh, the husband of the complainant, under Section 204(1) of the Code. The order was passed on 11.7.1995 (Annexure-2 to the petition). From the perusal of the order it is evident that the learned Magistrate did not find any prima-facie against other accused and they were accordingly not summoned. It is also evident that the complainant did not feel aggrieved by the said order and did not file any revision against the said order or any petition before the High Court. However, when the criminal case was posted for recording of evidence under Section 244 of the Code the complainant respondent no.2 moved an application under Section 319 of the Code pressing for an order so that the others also may be summoned and tried for the above offences alongwith accused Joginder Singh. The learned Magistrate without recording the evidence of the complainant passed a favourable impugned order dated 15.5.1996 on this application and decided to proceed against five others named therein and directed issuance of summons against them.

The learned counsel for the applicants who are three of the five persons sought to be proceeded with under Section 319 of the Code submitted that the impugned order is illegal and unjust because there was no evidence before the learned Magistrate to pass such an order. There can be no doubt that the statement of the complainant had not been recorded under Section 244 of the Code and therefore there was no material before the Magistrate to pass such an order to proceed against others also in the criminal case. Learned Magistrate lost sight of the fact that the summoning order had become final and was not challenged before superior courts by the complainant herself. In view thereof the impugned order cannot legally be sustained and the same deserves to be set aside.

The petition is therefore allowed. Impugned order dated 15.5.1996 is set aside and stay order dated 15.7.1998 is vacated.

**(Irshad Hussain, J.)**

Dated 11.11.2003
Rawat